IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
CRIMINAL DIVISION

Not Restricted

S ECR 2023 0029

IN THE MATTER of the *Bail Act 1977*

and

IN THE MATTER of an application for bail by LUKE WARREN

Applicant

JUDGE:	Niall JA
WHERE HELD:	Melbourne
DATE OF HEARING:	1 March 2023
DATE OF ORDERS:	3 March 2023
DATE OF REASONS:	3 March 2023
CASE MAY BE CITED AS:	Re application for bail by Luke Warren
MEDIUM NEUTRAL CITATION:	[2023] VSC 98

CRIMINAL LAW – Application for bail – Whether unacceptable risk exists if applicant released on bail – No evidence or allegations of violence committed by applicant towards protected person – Risk of committing an offence can be moderated by conditions – Bail granted with conditions.

APPEARANCES:	Counsel	Solicitors
For the Applicant	Mr C Farrington	SLKQ Lawyers
For the Respondent	Mr P Pathmaraj	Ms A Hogan, Solicitor for Public Prosecutions

HIS HONOUR:

1 This is an application for bail by Luke Warren ('the applicant'). He is on remand for, and seeks bail on, two sets of charges laid by Detective Senior Constable Robert Baker, which (taken together) are as follows:

(a) obtain property by deception (three charges);[1]

(b) obtain financial advantage by deception (14 charges);[2]

(c) theft;[3]

(d) failing to provide police with access to computers/data storage devices;[4] and

(e) attempt to obtain financial advantage by deception.[5]

Procedural history

2 On 1 September 2022 the applicant was arrested and interviewed by informant Baker with respect to alleged deceptions. He was released pending summons. However, further investigations took place, and on 9 September 2022, the applicant was charged with nine deception offences and remanded ('the first proceeding'). That day, he made a self-represented application for bail before the Melbourne Magistrates' Court. Bail was granted by Magistrate Doherty and a surety of $20,000 imposed.

3 The applicant, however, was unable to meet the surety condition and remained in custody. He filed an application to vary his bail to remove the surety condition, but before that was heard, Detective Senior Constable Baker filed a further set of charges against the applicant. The further charges were listed as a second proceeding ('the second proceeding'). A filing hearing for that proceeding was heard on 30 September 2022, the same date that the application to vary bail to remove the surety condition was listed. At that hearing, the prosecution sought to revoke the grant of bail in the first proceeding, and remand the applicant on the further charges in the second proceeding.

1 Contrary to *Crimes Act 1958*, s 81(1).
2 Contrary to *Crimes Act 1958*, s 82(1).
3 Contrary to *Crimes Act 1958*, s 74.
4 Contrary to *Crimes Act 1958*, s 456AA(9).
5 Contrary to *Crimes Act 1958*, s 82(1).

4 The matters were adjourned to 19 October 2022, and further to 2 November 2022. when, in the first proceeding, the application to vary bail was refused, and bail was revoked. Bail was refused in the second proceeding.

5 On 20 December 2022, the applicant made a further application for bail with respect to all charges, with the support of the Court Integrated Services Program ('CISP'). A magistrate granted the application, with conditions including a curfew. Amongst other things, the applicant utilised CISP to secure temporary housing when granted bail.

6 On 5 January 2023, the applicant filed an application to remove the curfew and to vary his bail address, having secured more permanent housing.

7 On 6 January 2023, the respondent filed an application to revoke bail, made on the basis that the applicant had breached bail by being away from his residence between 21 and 23 December 2022, by failing to answer the door during a curfew check on 6 January 2023, and by not advising the respondent of his room number.

8 The applications were listed on 9 January 2023, but were adjourned to 27 January 2023. On that day, a magistrate revoked bail and the applicant has remained in custody since 27 January 2023. The matters are next listed for committal hearing at Melbourne Magistrates' Court on 13 June 2023.

9 At the time the applicant was charged with respect to the informant Baker matters, he was on summons for the matters where the informants are Brown (charged on 15 July 2021), Marshall (charged on 23 January 2022) and McCorkell (charged on 14 June 2022). Those matters are charged on summons and also involve dishonesty offences. He was subsequently charged in another matter whether the informant is Brown (charged 31 October 2022).

10 On 12 September 2022, an interim family violence intervention order ('FVIO') with full conditions was made against the applicant, where the affected family member (AFM) was his former partner ('the protected person'). The applicant consented

without admissions to the FVIO being made. On 30 October 2022, Vicki Siderovska phoned the protected person's mother on behalf of the applicant, enquiring about the protected person. The protected person's mother reported the call to police. Ms Siderovska told police that her partner was on remand with the applicant and that during a call to him in custody, the applicant was passed the phone and made the request. Ms Siderovska denied knowledge of the FVIO (although the protected person's mother reported otherwise). The applicant was charged with breaching the FVIO.

The alleged offending

11 The parties state that despite the two separate proceedings arising out of the two sets of charges being filed, the matters have been dealt with as a single matter. The charges relate to conduct occurring over the period of 2019 to 2022. They broadly concern allegations of the applicant not paying for services he received; being paid for services he did not provide; selling cars subject to finance or other conditions that were ultimately not satisfied; and submitting fraudulent loan applications. The applicant allegedly received individual payments ranging from $1,000 to $188,339.40 as a result of his conduct.

12 The respondent gave two estimates of $700,000 and $1 million for the total amount allegedly obtained by the applicant. I have had regard to all of the alleged offending in my decision.

The applicable legislation

13 The *Bail Act 1977* ('the Act') is to be interpreted and applied having regard to the guiding principles set out at s 1B(1) of the Act.[6] Further, a person held in custody in relation to an offence is entitled to bail unless the Act requires the Court to refuse it.[7]

Step 1 – Exceptional circumstances

14 The exceptional circumstances test applies where a person is charged with an offence listed under Schedule 2 of the Act while on summons for another offence (or

6 The Act, s 1B(2).
7 Ibid s 4.

offences) listed under Schedule 2 of the Act.[8] It is a Schedule 2 offence to commit an indictable offence while on summons for another indictable offence.[9] The parties agree that the applicant is required to satisfy the Court that exceptional circumstances exist to justify a grant of bail. The basis for this is that the applicant is alleged to have committed indictable offences in the informant Baker matter (obtain property by deception), while on summons for another indictable offence informant Marshall matter (obtain property by deception), which was in turn alleged to have been committed while on summons for other indictable offences in the informant Brown matter (obtain property by deception and obtain financial advantage by deception).

15 Where the 'exceptional circumstances' test applies, the Act requires the Court to refuse bail unless satisfied exceptional circumstances exist to justify bail being granted.[10] While the phrase 'exceptional circumstances' is not defined in the Act, it has been summarised as requiring circumstances 'right out of the ordinary'.[11] In *Roberts v The Queen*, the Court of Appeal considered the language of the provision to be 'unambiguous', in that:

> the bail decision maker is prohibited from granting bail unless the applicant can point to circumstances which are exceptional in character and which justify — that is, provide justification for — releasing the person on bail.[12]

16 The burden in satisfying the Court with respect to exceptional circumstances lies with the applicant.[13] In applying the test, the Court must have regard to the surrounding circumstances, including those listed at s 3AAA of the Act.[14]

17 The respondent did not contest that the combination of matters satisfied the exceptional circumstances test. In written submissions, the respondent submitted that the Court 'can be satisfied that exceptional circumstances exist', given (a) the applicant's limited criminal history; and (b) the likely delay to the finalisation of

8 Ibid s 4AA(2)(c)(ii).
9 Ibid sch 2 item 1(b).
10 Ibis ss 4A(1)-(1A).
11 *Re ER* [2022] VSC 88, [30] (Kaye JA) (citations omitted).
12 [2021] VSCA 28, [35] (Maxwell P, Niall and Emerton JJA).
13 The Act, s 4A(2).
14 Ibid s 4A(3).

these proceedings.

18 Based on the position of the respondent and having regard particularly to the delay before a trial could be conducted, that the applicant has little criminal history and has not been incarcerated before, I am satisfied that there are exceptional circumstances justifying the grant of bail.

Step 2 – Unacceptable risk

19 Where the Court is satisfied exceptional circumstances exist to justify bail, bail must still be refused if the Court is satisfied there is an unacceptable risk the applicant would, if bail were granted:

> (i) endanger the safety or welfare of any person; or
>
> (ii) commit an offence while on bail; or
>
> (iii) interfere with a witness or otherwise obstruct the course of justice in any matter; or
>
> (iv) fail to surrender into custody in accordance with the conditions of bail… [15]

20 The surrounding circumstances, again including those set out at s 3AAA of the Act, must be taken into account in relation to unacceptable risk.[16] Further, the Court must also consider whether the risk can be reduced to an acceptable level by imposing conditions of bail.[17] The onus in satisfying the Court of unacceptable risk lies with the prosecutor, both in terms of the existence of the risk and that it is unacceptable.[18]

Section 5AAAA – Family violence risks

21 A court considering a grant of bail must enquire of the prosecutor as to whether a FVIO, family violence safety notice, or recognised DVO is in force against the applicant.[19] Where the applicant's release on bail is being considered, the Court must also have regard to whether the applicant would commit family violence if bail were granted, and whether the risk of family violence could be mitigated by imposing a

15 Ibid s 4E(1)(a).
16 Ibid s 4E(3)(a).
17 Ibid s 4E(3)(b).
18 Ibid s 4E(2).
19 Ibid s 5AAAA(1).

bail condition or making a FVIO.[20]

The applicant's personal circumstances

22 The applicant is 31 years old.[21]. The applicant reportedly has a history of fractured family relationships. The applicant reports having experienced brief periods of homelessness resulting from family and mental health issues.[22] CISP made enquiries of the Victorian public mental health database and found that the applicant was admitted to Maroondah Hospital from 30 to 31 July 2015 with recorded diagnoses of adjustment disorder, depression and suicidal ideation. After he was first remanded on the current matter, the applicant began engaging with mental health supports in custody. The applicant had arranged to attend counselling sessions through CISP when released on bail on 20 December 2022. He told CISP he was able to attend his first appointment with psychologist Gary Maloney, before bail was revoked.[23] The applicant also self-reported to CISP that he suffered severe head injuries after being 'king hit' in 2013, and sought to engage with screening for an acquired brain injury ('ABI').

Availability of treatment or bail support services

23 An updated CISP report dated 28 February 2023 has been filed with the Court, which confirms that CISP support will be available to the applicant if bail is granted. The applicant reports his engagement with CISP on the prior grant of bail was positive. The updated CISP report is consistent with this submission, with the writer reporting the applicant was motivated, transparent, and engaged positively.

24 The applicant highlights the importance of CISP, given his requirement for community support. The applicant concedes that emergency accommodation through CISP is not optimal. However, it is submitted that when he was previously granted bail on the current matter he was able to successfully utilise CISP for housing support, and therefore is able to do so again. CISP have also agreed to

20 Ibid s 5AAAA(2).
21 His date of birth is 16 March 1991.
22 See Affidavit in Support, Exhibit SG-5, for a copy of the applicant's CISP recommended reports dated 14 December 2022 and 19 December 2022.
23 See CISP recommended report dated 28 February 2023.

support the applicant to re-engage with his psychologist Mr Maloney and to obtain a mental healthcare plan from his general practitioner.

Unacceptable risk

25 The applicant submits that any risk alleged can be moderated to an acceptable level by the imposition of conditions of bail. The applicant has proposed the following conditions of bail, noting that these are the effectively the same conditions as his previous grant of bail on this matter:[24]

(a) Report to Dandenong Police Station daily between 6:00 am and 9:00 pm;

(b) Reside at an address approved by/arranged by Dandenong Wayss or CISP;

(c) Surrender valid passport or any other valid travel documents held within 24 hours of release to the informant, and not apply for any other;

(d) Not attend any points of international departure;

(e) Not leave Australia;

(f) Not leave the State of Victoria;

(g) Not contact witnesses for the prosecution except for the informant;

(h) Not leave place of residence between the hours of 9:00 pm and 6:00 am;

(i) Comply with all requirements of CISP;

(j) Comply with the intervention order made in case number N11976012 dated 12 September 2022; and

(k) Present at front door of residence during curfew hours upon request of any member of Victoria Police.

[24] The applicant's bail conditions from 20 December 2022 also included a condition that if the applicant's passport were lost, he was to report the loss to the Australian Passport Office or appropriate authority within 14 days of release.

The respondent's contentions

26 The application for bail is opposed on the basis the applicant presents an unacceptable risk that, if granted bail the applicant will endanger the safety and welfare of a witness and commit other offences on bail. The respondent does not submit that the applicant is a risk of failing to appear at Court on the return of the charges.

Bail compliance history

27 The informant's report outlines alleged breaches of bail by the applicant in December 2022 and January 2023, which formed the basis of the revocation of bail. On 23 December 2022, Ms Adams from CISP advised the informant the applicant would be residing at the Punt Hill Apartment Complex in Wantirna South. The informant made enquiries of the complex and was advised the applicant was booked for several nights, to be paid for by his insurance company. However, the claim to the insurance company is alleged to be fraudulent and the booking was cancelled. The applicant was arrested on 25 December 2022 for breaching bail, where he confirmed his bail address and was released. It is also alleged that he was absent from another bail address (Ibis Motels) during curfew on various occasions when released on bail. The informant's report states the applicant failed to advise of his room number when at hotels or boarding houses, at one point telling police that the boarding house at 6 Barilla Court did not have room numbers. The informant was later told the room number by the applicant's solicitor.

28 The informant's report also details an incident where, while on bail, the applicant is alleged to have used a computer belonging to Michelle Schembri (with whom the applicant briefly had a relationship on release from custody) to make a report to IBAC about the informant, purporting to be from Ms Schembri. Ms Schembri has since confirmed the report was false.

Outstanding matters

29 In addition to the current matters, the informant's report outlines further offending for which the applicant is being investigated.[25] In September 2022 while in custody,

[25] See Affidavit in Response, Exhibit JBD-1, informant's report [196]–[213] for a summary of this

the applicant allegedly arranged for two vehicles (a Ford Ranger and Mercedes Vito van) to be removed from his Rowville factory. It is alleged the prisoner telephone system calls show this was arranged in exchange for payment of the $20,000 surety imposed as part of the applicant's prior grant of bail. On 23 December 2022, the applicant is reported to have contacted Suncorp insurance to make a claim for theft of the Ranger.

FVIO in force

30 The respondent also opposes bail on the basis of the applicant's alleged risk to the protected person's safety, despite the current FVIO. Noting the protected person is a critical prosecution witness, the respondent contends that the applicant poses an unacceptable risk of both endangering the safety and welfare of any person and of interfering with witnesses. In support of this submission, the respondent states that, while on bail, the applicant obtained an interim FVIO against the protected person listing their infant son as the affected family member. On 9 February 2023, this FVIO was revoked on the basis that it was vexatious and an abuse of process. Police have identified the applicant as a vexatious complainant, noting that he has been the complainant or AFM in several intervention orders in order to achieve ulterior purposes. The informant also states that the protected person has reported being financially controlled by the applicant.

Family support and stable accommodation

31 The informant's report suggests that from October to December 2022, the applicant put forward various bail addresses in support of his previous application for bail that were either fabricated, or where the occupants did not know the applicant and would not have him reside with them.[26]

Employment

32 The informant believes that the applicant uses his business activities as cover for his fraudulent behaviour, and states that he is not a qualified or licensed electrician.

incident.

[26] See Affidavit in Response, Exhibit JBD-1, informant's report [116]–[176].

Availability of treatment or bail support services

33 With respect to the possible ABI outlined in the previous CISP report, the informant states that while the applicant was 'seriously assaulted' in 2014, the extent of the applicant's injuries, and treatment required, is disputed.

Unacceptable risk

34 In addition to interfering with witnesses in relation to the protected person, the respondent contends the applicant poses an unacceptable risk of obstructing the course of justice. In support of this submission, the respondent relies on the false bail addresses put forward by the applicant, along with an incident where the applicant is said to have fabricated a history with Michelle Schembri after having met a relative of hers on remand. Prisoner telephone system calls made in October 2022 between Ms Schembri and the applicant reportedly portray conversations where Ms Schembri agreed to tell the Court she had known the applicant for 12 months in order to increase the applicant's chances of bail. The respondent states that charges in relation to this incident are being considered.

35 The respondent also submits the applicant presents an unacceptable risk of offending while on bail, noting the ongoing investigations with respect to fraudulent insurance claims made by the applicant. The informant states that the applicant 'is in dire financial straights [sic]' and is likely to continue to commit fraud if released on bail.

Decision on unacceptable risk

36 I am not persuaded that there is an unacceptable risk to the safety of the protected person. There is no evidence or allegations of violence having been perpetrated by the applicant. The two matters on which the respondent relies concern indirect contact with the protected person and the applicant making an application for a FVIO.

37 I am prepared to accept that there was no basis for the applicant to seek a FVIO and, it would be open to infer that it was done to pester or intimidate the protected family member who is also a prosecution witness. In an earlier CISP report, the applicant

was reported as reporting 'feelings of "anger and sudden outbursts"' with his former partner.[27] He has subsequently denied saying this. I proceed on the basis that there is some evidence of antipathy and anger towards the protected family member.

38 Nevertheless, there is no history of violence, the matters alleged consisted of improperly using the Court process to obtain a FVIO. Such conduct is easily detected, indeed not concealed, and can be addressed if it occurs. I am also persuaded that the risk of breaching bail and returning to custody will be a powerful factor in stopping the applicant from contacting or being involved with the protected person.

39 Based on the material, there is a risk that the applicant will commit an offence on bail. The charges, if proven, might well establish a pattern of behaviour that would give rise to such a risk. However, I am not persuaded that it is appropriate to address this risk by remanding the applicant in custody. More specifically, I do not think that the risk is unacceptable in the circumstances. The alleged offending has involved dishonesty offences in which the applicant has not sought to conceal his identity. I am also persuaded that the risk can be moderated to an acceptable level by strict conditions. I also give weight to the support that will be availing through CISP as a means of monitoring how the applicant is progressing on bail. The CISP Report records that the applicant has attended all appointments with the CISP program and is motivated and appears transparent throughout his appointments.

40 I am satisfied that the applicant has the capacity to comply with the conditions and understands the gravity of any noncompliance.

41 Again, it will be obvious to the applicant that any breach of bail or further offending would, in the circumstances, most likely involve a return to custody to await trial which, on the indication provided to the Court would not be before August 2024. This should operate as a powerful incentive to the applicant.

42

[27] See CISP recommended report dated 28 February 2023, 2.